Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NOVAGOLD RESOURCES INC., Plaintiff,	:	**Docket#** 20-cv-02875-LDH-PK
- versus -	:	U.S. Courthouse Brooklyn, New York
J. CAPITAL RESEARCH USA, LLC. Defendants	:	September 30, 2020 10:07 AM

TRANSCRIPT OF CIVIL CAUSE FOR TELEPHONE CONFERENCE
BEFORE THE HONORABLE PEGGY M. KUO
UNITED STATES MAGISTRATE JUDGE

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THE CLERK: This is an Initial Conference in the matter of NOVAGOLD Resources Inc. v. J Capital Research USA, LLC, docket number 20-cv-2875. Magistrate Judge Peggy Kuo presiding.

Will the parties please state their appearances, starting with plaintiffs?

MR. RUBENSTEIN: Good morning, your Honor.

Jonathan Rubenstein on behalf of plaintiff, NOVAGOLD Resources Inc., and with me is my colleague, Jordan Kazlow.

MR. KORZENIK: And on behalf of defendant, J Capital Research, David Korzenik of Miller Korzenik Rayman, and with me my colleague, Terence Keegan.

THE COURT: All right. Good morning, everyone.

So this is an Initial Conference, and it's an opportunity for the parties to inform the Court a little bit more about your respective cases, and then also to set a plan for going forward.

Now I know that the defendants have asked for a pre-motion conference before the district judge with regard to a proposed motion to dismiss, and I believe that is coming up in October, October 13th. So Judge DeArcy Hall will decide at that point whether the motion can go forward, and in the meantime, defendant has requested a stay of discovery, assuming that the motion

to dismiss goes forward.

I don't want to get too much into the weeds on the motion to dismiss because that's for Judge DeArcy to decide, but we may need to talk a little bit about what that will entail because that will inform my decision about whether to stay discovery, or let it go forward.

So Mr. Rubenstein, why don't you just start -- I understand that this is a defamation lawsuit in two parts, one is defamation by libel, the other is trade libel, both under New York Common Law.

I understand that the defamation at issue is related to a report, and then also some Twitter -- some Tweets. And so you don't need to rehash the complaint, but you can point out the important parts, and maybe a little bit as to why you need discovery, and what kind of discovery you're anticipating, okay? Mr. Rubenstein, go ahead.

MR. RUBENSTEIN: (Audio interference). As your Honor pointed out yes, (audio interference) --

THE COURT: Mr. Rubenstein, let me stop you there. I'm sorry. Your phone line is cutting out.

MR. RUBENSTEIN: Oh. Oh, I'm sorry.

THE COURT: It's uneven in terms of picking up your voice and words.

MR. RUBENSTEIN: Oh, I'm sorry, is it better

now?

THE COURT: This is much better.

MR. RUBENSTEIN: Okay. Thank you, your Honor. Sorry about that.

As you mentioned we have a sort of two causes of action for libel, each of which arises under the same set of facts. This case is a clear short and distort scheme. My client, NOVAGOLD is a gold exploration and mining company. It's based in Canada but the gold assets exist in Alaska.

The defendant, J Cap brands itself as a market research firm, and its historical focus has been in the tech sector, with a strong geographical focus on companies based in China, or that do significant business in China.

On May 28th, J Cap issued what it titled a research report on my client, NOVAGOLD, and the report is 22 pages long, and nearly every sentence in the report contains an either false or misleading statement of fact, and many times both. And these false and misleading statements fall into three broad categories. I'm not going to go through all of the statements, but broadly speaking, we're talking about allegations about how NOVAGOLD has misled its investors, about costs of its significant gold exploration and mining project in

Alaska, misrepresentation concerning the logistics of building that mine, and false statements about company insiders dumping shares of the company, and reducing their equity in the company.

And when this report was released on May 28th, NOVAGOLD shares tumbled, and they lost a substantial amount of market share as the market reacted to the J Cap report.

Now J Cap made no secret of the fact that it had a short position in my client, but publishing outright falsities about my client in order to push down the stock price and cover a short is improper, and it's illegal, and that's why we're here.

NOVAGOLD has been left with a muddied reputation, to say the least, and forced to constantly attempt to regain market's trust by showing that J Cap's report was false, and misleading, and really nothing more than a hit piece.

NOVAGOLD believes that this plan by J Cap to create a report that was chock-full of falsities and misleading statements, was -- and dump it on the market in an attempt to cover a short position was in place for many months, and that NOVAGOLD believes that the facts will show that J Cap didn't act alone.

So with its damaged reputation, and a

significant amount of money already out-of-pocket on account of the J Cap report, NOVAGOLD comes here to hold it, and whomever was working with it, responsible.

So that's a bit about the background of the case. I'm happy to answer any other questions about the background of the case if your Honor wishes. Otherwise, I can describe the type of discovery that we will be seeking, at least in the outset.

THE COURT: So I just have one question. You talked about J Cap's short position, and you said they were open about it. Can you just tell me a little bit about how that information was conveyed?

MR. RUBENSTEIN: So the report was published on J Cap's website, and J Cap -- and it was on or around the headline, made it clear that the company had a short position in NOVAGOLD and then proceeded to release the report.

THE COURT: Okay. Great. Then please go ahead in terms of what discovery you're anticipating.

MR. RUBENSTEIN: Sure. So at least at the outset, your Honor, we would anticipate seeking discovery on a handful of different topics. We -- NOVAGOLD would like discovery on how NOVAGOLD was identified as a target for the report. The third parties that either influenced J Cap's decision to target NOVAGOLD, or worked with it to

create the report, or put the report in motion.

Discovery, of course, about whatever research efforts that J Cap claims that it undertook to compile the report, information concerning the -- J Cap's trading of NOVAGOLD's securities, or any other related securities in the industry that could have been put in motion through this scheme.

Let's see. The public -- let's see, the publication of the actual report and the Tweets, your Honor mentioned the Tweets, the online publication of the defamatory statements, those were really more of the ilk of republication of many of the statements that existed in the report. We would like some, you know, discovery about who controls that method of publication of those statements, which is to say Twitter, and their Twitter account.

Those general categories come to mind, at least at the outset of the discovery that we would like to seek from J Cap.

THE COURT: Okay. So it sounds like part of what you're trying to prove in your case is that it was a scheme, and that it was deliberately published to drive down the stock prices to the benefit of the defendant, and that is one of the -- I forget which one of the libels it is where it says if you are -- I guess the

definition by libel, if it's actual malice, then that would be an element of --

MR. RUBENSTEIN: Yes, but --

THE COURT: -- that (indiscernible) --

MR. RUBENSTEIN: Yes, that's exactly right. And while we might -- and we do dispute whether actual malice is appropriate in this case, and whether NOVAGOLD is a public figure, the defendant certainly has made that assertion, that the defendant is a public figure, and that actual malice is required.

THE COURT: Uh-hum.

MR. RUBENSTEIN: And yes, and so I do agree with your Honor's characterization with a slight tweak to it, which is that it is NOVAGOLD's position that this report was created with the intent to harm NOVAGOLD, to harm NOVAGOLD's reputation in the industry, and the natural byproduct of that for J Cap would be lowering the price of stock which it would then use to cover its position in product.

THE COURT: Oh, okay. I would've thought it -- your theory would be the other way around, that they're trying to make money and in the process, they're hurting your client's reputation, but you're saying the intent was to harm the reputation, and the byproduct was to make money.

MR. RUBENSTEIN: Yes. I assume we might be talking about things that happen almost instantaneously in time.

THE COURT: Okay.

MR. RUBENSTEIN: The first has to happen before the second can happen.

THE COURT: Okay. And I wasn't sure if legally it made a difference, which the intent was. So I just wanted to be clear about it.

MR. RUBENSTEIN: Sure.

THE COURT: All right. So I think that's all I have. Mr. Korzenik, or Mr. Keegan, go ahead.

MR. KORZENIK: Yes. I'm going to try to speak on my speaker phone, if that's not as clear, then please tell me, and I'm going to go directly to the handset.

THE COURT: So far so good.

MR. KORZENIK: So far so good. So there are three points that I want to address, and one is the first one is why cases that implicate First Amendment issues, and in particular, the opinion defense which is a matter of law, a matter of U.S. Constitution, but more importantly, a matter of New York State Constitution, and why that warrants a stay.

The second thing I wanted to do is I wanted to look at some of the statements that they've put in their

letter, that they say are actionable, and your Honor is going to see why they are matters of pure opinion.

And the third thing I wanted to discuss, and I'm going to move it up front because it occupied most of what my adverse colleague offered as his main pitch, this idea of some kind of short conspiracy, I do -- most of my work is media defense, and I've represented many news organizations who claim that the -- and websites that do financial reporting.

And in virtually every single one of them, every single one of them in which a company claims that they've been defamed by a news article, or by an analyst, and seeking out an analyst website that we've acted for, in everyone of them, they all insist that this is a conspiracy of short sellers, and that claim is usually -- is almost -- not just usually, every time I've seen it, is a canard. It's total -- it's totally made up. It's -- and it's particularly --

When you look, for example, in the famous Enron case, the main pitch that Enron made against Fortune Magazine's writer, Bethany McLean, was that her main source was Chanos, who was a short seller. That's the same thing with WorldCom, it's the same thing with that famous case about the Big Short, Michael Lewis' book, which I had some involvement with, where Mr. Chau, who

sold these CDOs sued them for -- sued the book publisher in Michael Lewis, and the short seller, Eisman, and the Court decided it was a matter of opinion. But the big -- the claim that Chau was making was oh, they're short sellers, they're short sellers.

In Seeking Alpha, where it just comes up all the time, the claimants say exactly what Mr. Rubenstein offered, and Judge Oetken, for example, in one argument came up with this response by the Bank of the Internet suing -- Seeking Alpha to try to find out what an anonymous poster had said. The anonymous poster disclosed that he was short on BofI stock, and Oetken said, well, if there really were a shorting conspiracy to this stock, it would be somewhat odd to the posters reveal that they're short the stock, and if it truly was a conspiracy, you would think that they would hide that information. And in any event, he said I find it's too attenuated, and he threw that out on a threshold motion that involved a subpoena.

But what's interested, BOFI wanted to get the name of the anonymous analyst in order to sue him or her, and the Court not only didn't just stay it, it said they can't get this discovery at all through Seeking Alpha, so they couldn't sue.

So when First Amendment issues are implicated,

as they really here, when everything is so plainly matter of opinion, and when it is a classic analyst report, typical analyst report and evaluation of a company's future projects, a bet or a prediction about its future, which is based on publically-available materials, all cited to in the complaint, and all cited to in the report, that's opinion in its purest sense.

Now the thing that's also significant here is in Biro, for example, versus Conde Nast, that was decided in the Southern District by Judge Oetken, and D'Avolio case decided in the Eastern District by Judge Feuerstein, citing Biro, Biro says Rule 12(b)(6) not only protects against the costs of meritless litigation but it provides assurance to those exercising their First Amendment rights, that doing so will not needlessly become prohibitively expensive.

And court generally recognize that when a case involves libel, when a case involves the First Amendment, when it involves an opinion defense, which is a constitutional matter, especially in New York under Amino AG and Brian v. Richardson, those two cases actually make it clear that New York's opinion defense, and its definition of opinion is broader than that of the U.S. Constitution, so that things that were considered in Malkovich, which the plaintiff cites that were considered

to be factual, are deemed to be opinion under Judith Kaye's decision of this New York Court of Appeals in the Amino AG, and also in the Brian v. Richardson case. They look more broadly at the context of these things.

Analyst reports are predictions, and one of the things Amino AG says is that writers' presumptions and predictions as to what appeared to be, or what might well be, or what could well happen, or should be, would not have been viewed by the average reader of the journal. That was a science journal as conveying actual facts about the plaintiff. And that rule applies are in the commons case in which was cited, the analyst reports.

It applies to analyst reports as in the Biospherics case, which basically is our case. In that case, the analyst group, Sugaree, which is the company, is not up to the company's claims, but in that case, the Court said the prediction of an analyst's opinion is not actionable, however harmful it may be.

And Judge Daniels in the Chau case in the Big Short case, he said yeah, of course opinions can be harmful, but that doesn't make them actionable, and that's what this plaintiff is trying to say.

THE COURT: Can you focus on the discovery --

MR. KORZENIK: So what --

THE COURT: -- issue because these are --

MR. KORZENIK: Yes.
THE COURT: -- ultimate issues of whether the --
MR. KORZENIK: Well, that is --
THE COURT: -- dismissal of the case at all --
MR. KORZENIK: -- the reason --
THE COURT: So --
MR. KORZENIK: Yeah.
THE COURT: -- okay, so tell me what the discovery issue is.
MR. KORZENIK: Well, that is -- so the discovery issue is this, and let's look at the topics that they want discovery on. The whole short business, and trying to figure out who are people are, is an invented story.
And note, here's the heading of our website, "Be warned. We are short-sellers. We are biased. We do our best to find and present facts based on extensive primary research, and using public resources, but we will profit if these stocks decline in value. We do not offer advice. We present our views." So that falls right into what Judge Oetken observed about the Seeking Alpha, one of the --
THE COURT: Can you give me the website, because I can look it up right now, and follow along.

MR. KORZENIK: For BOFI, it is actually -- there are several BOFI cases, but the one --

THE COURT: No, no, not the case. I'm looking -- you were reading from your client's website.

MR. KORZENIK: Oh, the website. I'm sorry. Yes. If you go -- if your Honor goes to www.jcapitalresearch.com and Terence, I think it's at the home page.

MR. KEEGAN: That's right, your Honor. JcapitalReserach.com, when you access that website --

THE COURT: I see it.

MR. KEEGAN: You see a banner, and then --

THE COURT: It says we are biased. We go deep, so that investors don't have to.

MR. KORZENIK: Yes.

MR. KEEGAN: Yes.

THE COURT: Okay.

MR. KORZENIK: So they're making clear that their statements are - that they are shorts.

THE COURT: Uh-hum.

MR. KORZENIK: And so they're very open about it. So let's look at the statements that Mr. Rubenstein highlighted, both in his letter, and his complaint. He said, "Oh, well we misled investors." By the way, this is just like the Sugaree case, Biosphere.

But look at the rest of the sentence, and then look at the report. It's about pipe dreams. It's about predictions. It's about the future. It's about a bet that it won't succeed.

So here's the rest of the sentence, and this is really instructive, "For the past 15 years, NOVAGOLD's management team has systemically misled investors with," now listen, "subjective presentation of information about a deposit so remote, and technically challenging that the mine will never be built." So that's a prediction, and the rest of the report is basically is based on the opinions of the writers about the "publicly-available information" that they examined. So what that is is pure opinion.

Here's another one. "The Donalin Gold Project" --

THE COURT: Well --

MR. KORZENIK: -- is not feasible --

THE COURT: So I'm sorry to cut you off because I don't have --

MR. KORZENIK: Yes.

THE COURT: -- I didn't set aside a full hour for this discussion, so I --

MR. KORZENIK: Okay.

THE COURT: And it's not for me to decide the

ultimate issue of whether this is, in fact opinion. I really need to focus on the discovery.

MR. KORZENIK: Right.

THE COURT: So can you please talk to the discovery that Mr. Rubenstein has proposed, and tell me why that shouldn't be allowed at this stage.

MR. KORZENIK: Well, I think I did in the sense that the whole idea that he wants to investigate who our -- who might have been cited as to write this report, or who might be involved in the report, or why we wrote it, is utterly beside the point when it comes to opinion. This case will be dismissed on that ground.

THE COURT: Uh-hum.

MR. KORZENIK: And the whole idea of a stock -- being short is not an impropriety. And being a short seller is not an impropriety, it is one of the important functions of the market. So his effort, which he focuses on here to explore the short -- the motivation for the article, is utterly beside the point and it's a waste of time, and we don't have that kind of -- those types of resources to spend on that kind of really fishing expedition.

So what's going to happen though for us is if the actionable statements are deemed to be a legitimate basis for discovery, and they are not, they're opinion,

we're going to be spending huge amounts of time having experts talk about whether it's "feasible to put into production at any gold price because it's so remote and technically challenging a mine to build", is that something a jury should decide? Should the jury be asked, or should we have to get discovery on whether that prognosis is right or wrong?

THE COURT: Well, I didn't hear --

MR. KORZENIK: They say (audio interference) --

THE COURT: I'm sorry. Again, I'm just trying to --

MR. KORZENIK: Yes.

THE COURT: -- bring you back to the points here. Mr. Rubenstein is not asking -- that was not on his list of discoverable items at this stage.

MR. KORZENIK: Well, look --

THE COURT: The items listed do not include the expertise, it was information, and I can go through it again if you want to know what to focus on, he said information on NOVAGOLD identified this particular plaintiff as a target --

MR. KORZENIK: That's not (audio interference).

THE COURT: -- and the third parties to work together. So can you just focus on those things, and --

MR. KORZENIK: Yes.

THE COURT: -- why it shouldn't be the subject of discovery now.

MR. KORZENIK: The subject of discovery that I was raising was stuff that he had put into his initial -- you know, his statement about -- to us earlier in our meeting about what discovery he wanted.

THE COURT: Uh-hum.

MR. KORZENIK: So I guess he's not interested in those things, but --

THE COURT: At this stge. I asked him to tell me what discovery --

MR. KORZENIK: Oh.

THE COURT: -- he wants now.

MR. KORZENIK: So what I'm saying is that this -- what he just raised has nothing to do, the reason that we wrote the article has nothing to do with whether a reasonable reader would view it as opinion or not under New York's Constitutional definition of opinion because if it is opinion, which can be decided on a reading of the words by a judge, it's a root matter of law to be decided by the Court, that discovery is not needed.

And that applies generally to this short conspiracy. We've disclosed, and he admits that we've disclosed that we are short sellers, and there's nothing wrong with that.

THE COURT: Uh-hum.

MR. KORZENIK: So the real question is why do we have to spend time, and money, providing disclosure of something that is irrelevant to the motion that we've made, and really ultimately is not even a -- isn't going to survive a Rule 12(b)(6) motion. So those --

THE COURT: So you're saying that the motion on whether this is the issue, which you're going to pose in the motion to dismiss of whether this is opinion, should be decided just on the four corners of the alleged statement and the complaint. There should --

MR. KORZENIK: That's correct.

THE COURT: -- be no (audio interference) information necessary to make that determination.

MR. KORZENIK: That's correct. He does not need any of that, or nor do we, in order to ascertain whether --

THE COURT: Nor does Judge DeArcy Hall.

MR. KORZENIK: -- (audio interference) statement -- exactly. And that's exactly what the Ammino case, that's exactly what the Chau case, is what every case on opinion says, is that you don't need any of this stuff. You do it on the basis of the four corners of the complaint, and Judge Feuerstein in D'avolio says you look at all of the documents in the complaint, and that a

reference that's incorporated by reference therein, and that is the basis for terminating the action.

THE COURT: Okay.

MR. KORZENIK: And so I am pointing to the general constitutional policy that when First Amendment issues are implicated, and opinion is going to be the dispositive case -- and by the way, even if he contends that something might survive, why should we have discovery about whether you need that horizontal drilling across screens or not?

THE COURT: He didn't say that --

MR. KORZENIK: Why are we even having --

THE COURT: -- as part of what he is requesting in the discovery at this point.

MR. KORZENIK: He did in his papers to us, but if he's --

THE COURT: Again, this is --

MR. KORZENIK: -- just asking --

THE COURT: I asked specifically what discovery he wants now, and that was not on the list. So --

MR. KORZENIK: Right, but keep in mind that if we needed to protect -- defend ourselves in this case, and prove that our opinions are good ones, then we would have to do a lot of Alaskan depositions in order to confirm some of those things.

THE COURT: Sure.

MR. KORZENIK: So that's just not fair. But the other -- so it relates to the fact that our discovery burdens would be incredibly onerous, and their requests for discovery into why we wrote this report is just utterly a sideshow. It's a sideshow of the claim, and it's a total diversion from the actual legal issue that we are raising in our 12(b)(6) to Judge Hall.

And so for that reason, I'm requesting that this discovery, and all discovery, burdens be deferred until this motion can be determined.

THE COURT: Okay. So Mr. Rubenstein --

MR. KORZENIK: It may be that the whole thing --

THE COURT: Yes.

MR. KORZENIK: -- the conspiracy thing is also going to fall by the way in the motion for --

THE COURT: I hear you. All right.

Mr. Rubenstein, why do you need to do the discovery now rather than perhaps in a few weeks, or a few months?

MR. RUBENSTEIN: So our position, your Honor, is that the -- I mean, as we put in our letter, we as the plaintiff, you have a general right to a speedy resolution of the claims, and the longer that this false

report that belies my client left and right is out there, the longer that my client has to spend time and money with investors, and the market, in beating back the falsities time and time again, and delays to justice that it is due.

And what I'm hearing from opposing counsel is an argument is similar to sort of what we hearing the context as if personal jurisdiction were at issue in, you know, limiting it to something that is needed to resolve the motion to dismiss.

And what we are talking about more is the general principle that the filing of the motion to dismiss doesn't get you a stay of merits discovery, and we believe that merits discovery ought to proceed for one of the reasons -- one of the reasons is what I just mentioned. Another one is this -- as we mentioned in the letter, we believe that discoverable information is contained by third parties who are not under any obligation to preserve documents at the moment, and may not even have been identified, and so we want --

MR. KORZENIK: Could you tell us how that relates to the motion?

THE COURT: Can you please not interrupt?

MR. KORZENIK: Okay.

THE COURT: Go ahead.

MR. RUBENSTEIN: And so --

MR. KORZENIK: All right.

MR. RUBENSTEIN: -- and so we believe that the potential pendency of a motion to dismiss in this case, and I know your Honor doesn't hear me of the merits of the motion to dismiss, so I am not going to go into that, but suffice it to say is that we think that this is not the motion of the ilk that opposing counsel just described.

So our view is that the potential pendency of this motion to dismiss is not something that should put the brakes on merits discovery, and stand in the way of the speedy resolution of our claims, which we wish to begin pursuing discovery on immediately.

THE COURT: All right.

MR. KORZENIK: Your Honor?

THE COURT: So Mr. Korzenik, you wanted to say something? Yes, you can now.

MR. KORZENIK: Yes. So the reason that I say that this short conspiracy, which we deal with all the time, is irrelevant, is that if the statements are opinion, then the short conspiracy falls apart, and for that reason -- the other thing is that Jonathan is -- you know, as with many commercial litigators, they view this just as a commercial case, but when the case implicates

the First Amendment, then 12(b)(6) is supposed to protect defendants from exercising -- who exercise their First Amendment rights, and assuring them that doing so will not needlessly become prohibitively expensive.

So there's a policy in many -- most libel rulings that there should be an early disposition on motions to dismiss, and that they should be permitted, and that's what the Judge Oetken did in Biro, and that's what most courts, in fact Judge Sack as well, favors early disposition of these cases. And if this stuff is opinion, then the conspiracy canard falls away, and that's why I'm asking for a stay pending resolution of the motion.

THE COURT: All right. So --

MR. KORZENIK: But I'll just close with one thing, the Sandals case which they cite, your Honor should look at that too, because it goes to the New York constitutional definition of opinion, and it cutoff discovery all together of Sandals Resort Company, that wanted to get to the bottom, just as these plaintiffs do, of the negative statements that were made about their company, and that hurt their stock price. The Court found it to be pure opinion based on the documents reviewed, and presenting the defendants' point of view. Discovery wasn't just stayed, it was outright denied.

THE COURT: All right. So I think that the limited discovery that's been proposed can go forward, and so I will deny the motion to stay discovery, but given that you have your conference before Judge DeArcy Hall in about two weeks, if you want to raise the issue with her again, it is your prerogative, because she has the right to overrule any of my decisions, but I think that based on what I am hearing, there isn't a strong enough basis to stop all discovery, especially given the limited discovery that Mr. Rubenstein has put forward as a proposed set of early discovery, and especially given concerns about preservation of materials in this area.

So let me just take a quick look --

MR. KORZENIK: We of course are preserving -- we're preserving materials. The one question I have, your Honor, is do we need to do sort of formal objections before the 13th, or can we imply know that the discovery is stayed until we present the same issue before Judge Hall?

THE COURT: Well, I will put down her that the -- that I'm denying the request to stay, and if you want then to post something saying that you intend to object to that, and would seek leave to bring it up at the conference on October 13th, then that will let Judge DeArcy Hall know that that's what you intend to do, all

right?

MR. KORZENIK: And would you also make note of the fact that it was some limited discovery, that it wasn't plenary?

THE COURT: I'm sorry, to make note of what?

MR. KORZENIK: That -- note that it was limited, some limited discovery --

THE COURT: Yes, that is limited to --

MR. KORZENIK: -- (audio interference).

THE COURT: -- the items that Mr. Rubenstein mentioned to start, and then, you know, as we move forward, if there's a need -- we would be doing it in steps, because I don't know how long this -- number one, whether the motion to dismiss will go forward, and number two, if it does, how long it will take.

So if it turns out, for example, that it takes several months, and there's a point at which the plaintiffs then say okay, we've done this first phase, we're still waiting for a decision but we would like to proceed with the next phase, of course they could raise that. That is how I intend to manage the discovery in this case. All right?

So the motion to stay discovery was a motion to stay all discovery, I'm denying it. I'm permitting the limited discovery to go forward on the items that Mr.

Rubenstein outlined, and so unless Judge DeArcy Hall overrules me, you should move forward on that. It doesn't stop the parties from coming back to say we would like to do more discovery, and for me to then look at where you are at that point, and what that next discovery is. Okay?

MR. KORZENIK: Okay.

THE COURT: So I think it's worth doing things in this phased way. Mr. Korzenik?

MR. KORZENIK: Yes, thank you, your Honor.

THE COURT: All right. So I --

MR. RUBENSTEIN: Thank you, your Honor. I appreciate your time.

THE COURT: And so what I will do is the discovery plan that you've given me sets forth some dates including a settlement conference date, so let's spend a few moments. Now this was, I know, submitted unilaterally by the plaintiffs.

Mr. Korzenik, do you want to have a settlement conference with the Court at some point too?

MR. KORZENIK: We have discussed it with the other side, but I -- at this stage, I think it's going to be difficult. I think that I'm always open to discussing it with them. We don't have hostile relations by any means. I'm not sure how it would be done, but I think we

would consider that maybe at some later stage.

THE COURT: All right. So what I'll do is I will not enter a scheduling order today. I will let the parties go back to the table, have some discussions, and then perhaps after October 13th, set forth a plan, whether discovery is moving forward -- if discovery is not stayed, let's say, that you should put forward a plan for how discovery will move forward, and at that point, you can also put down dates for settlement, and all those other dates, if you can predict at that point.

If you don't know, then you can simply say, you know, TBD, to be determined, but at some point soon, we need to have a scheduling order that either has dates, or states that things are being put off for a while, all right?

MR. KORZENIK: Okay.

MR. RUBENSTEIN: Okay.

THE COURT: Is there any questions, Mr. Rubenstein?

MR. RUBENSTEIN: Not from me, your Honor. Thank you for your time today.

THE COURT: And Mr. Korzenik?

MR. KORZENIK: Nothing further, your Honor. Thank you.

THE COURT: All right. Thank you, everybody.

Appreciate it.

MR. KORZENIK: Thank you.

MR. RUBENSTEIN: Thank you.

(Matter Concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this **6th** day of **October** 2020.

Linda Ferrara

Linda Ferrara

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